

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

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IN THE MATTER OF: ALVIN JOSEPH BOUTTE, Jr.

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) File No. 1100227  
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Notice of Hearing

TO THE RESPONDENT: Alvin Joseph Boutte, Jr. CRD No. 2739783  
505 N. Lake Shore Dr., Apt 511  
Chicago, IL 60611

C/o Michael Hayes  
K & L Gates LLP  
70 W. Madison St., Suite 3100  
Chicago, IL 60602

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953, [815 ILCS 5/1 et seq.] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 W. Washington St., Suite 1220, Chicago, Illinois 60606, on December 12 and 13, 2011 at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before James Kopecky, or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order of Prohibition should be entered against Alvin Joseph Boutte, Jr. (the "Respondent") in the State of Illinois and granting such other relief as may be authorized under the Act including but not limited to imposition of a monetary fine in the maximum amount pursuant to Section 11 of the Act, payable within ten (10) days of the entry of the Order.

The grounds for such proposed action are as follows:

1. That Respondent, Alvin Joseph Boutte, Jr. ("Boutte") was registered in the State of Illinois as a salesperson for Grigsby and Associates, Inc. ("Grigsby

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and Associates") an Illinois registered Dealer, from July 15, 2010 to September 21, 2011.

2. Grigsby and Associates is a registered Dealer in Illinois from April 13, 2007 to the present and according to its web site is a "full-service investment banking firm providing financial advisory and investment banking services to state and local governments and corporations."
3. In the State of Illinois, this included financial services related to bond offerings by State of Illinois agencies and municipalities including the Illinois Student Assistance Commission (ISAC).
4. Until September 21, 2011, Boutte was located in the Chicago Office of Grigsby and Associates as its Managing Director.
5. Sometime in the second half of 2007, Boutte began soliciting investors including ISAC to purchase restricted stock in ShoreBank Corporation (SBC), the bank holding company for ShoreBank, which, during the relevant time period, was a State bank registered with the Division of Banking, Department of Financial and Professional Regulation in the State of Illinois.
6. At all times relevant, SBC was not a publically traded company on any exchange but rather was a privately held corporation. Its securities were not registered with the Illinois Securities Department nor the Securities and Exchange Commission and relied upon exemptions from registration provided by State and Federal Securities laws. These exemptions restricted the manner and type of sales of SBC securities and therefore reduced their liquidity.
7. The Illinois Student Assistance Commission is a State agency whose mission is to administer and manage various college student financial assistance programs including "College Illinois!" a prepaid tuition program under Section 529 of the Internal Revenue Code and authorized by the Illinois Prepaid Tuition Act, 110 ILCS 979/1 et seq.
8. The intent of the prepaid tuition program as set forth in the Illinois Prepaid Tuition Act is to: "...both encourage and better enable Illinois families to help themselves finance the cost of higher education,

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specifically through a program that provides Illinois families with a method of State tax-free and federally tax-exempt savings for higher education." 110 ILCS 979/5.

9. The majority of College Illinois! prepaid contracts are purchased by parents or grandparents for their children or grandchildren.
10. As a prepaid tuition program, College Illinois! invests and manages an investment fund of about \$1.35 billion used to pay tuition for students who are the beneficiaries of prepaid tuition contracts through the Illinois Prepaid Tuition Trust Fund (the "College Illinois! Fund").
11. Most of the assets of the College Illinois! Fund are invested and managed by third party outside investment advisers who contract with ISAC to provide financial services as investment advisers and fund managers.
12. Working with SBC to solicit investors, Boutte began preparation of a self-styled offering analysis of an investment in SBC for potential investors (the "Offering Analysis").
13. Boutte completed his first version of an Offering Analysis relating to an investment in SBC dated January 3, 2008. The January 3, 2008 Offering Analysis stated as follows:

"This analysis was prepared by Grigsby & Associates inc. ("Grigsby") at the request of Illinois Student Assistance Commission as part of its assessment of an investment in The ShoreBank Corporation ("ShoreBank" or "Company"). Our objective is to highlight the value and risks of participating in the ShoreBank Corporation Offering referenced herein, and commenting on the appropriateness of the pricing of that investment."
14. During the time period Boutte was preparing the January 3, 2008 Offering Analysis, Boutte and Grigsby and Associates did not have any written contract with ISAC.
15. Approximately January 4, 2008, ISAC issued a Request for Proposals (RFP) relating to the offering of financial services regarding the underwriting of bonds to be issued by ISAC and for interest rate exchange agreements. Ten financial services firms, including

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Grigsby and Associates submitted to ISAC proposals pursuant to the January 4, 2008 RFP.

16. The proposal of Grigsby and Associates was the sole proposal that included an unsolicited provision stating that the firm would also provide: "Financial Advisor, investment banking and analysis services related to investment of 529 prepaid tuition plan assets in illiquid assets and/or private placement in new asset categories charges: 1.25 to 2% of invested assets."
17. After submitting the Grigsby and Associates' proposal to the January 4, 2008 RFP, Boutte continued working with SBC and ISAC in order for ISAC to invest in SBC.
18. At the time of Boutte's solicitation efforts, ISAC's College Illinois! investment policy which set forth guidelines for acceptable investments and maximum and target percentage of holdings in order to meet projected investment returns and to ensure prudent diversification of the College Illinois! Fund, did not allow investments in direct participation in private placement offerings of restricted securities.
19. This meant that in order for College Illinois! to invest in the securities of SBC directly, the College Illinois! investment policy would have to be revised to allow such investment and the revision approved by ISAC Commission Members.
20. Boutte recommended to ISAC that College Illinois! change its investment policy and provided advice and input to ISAC regarding specific revisions to the College Illinois! investment policy which would allow a direct investment by the College Illinois! Fund in SBC.
21. Concurrently, because the January 3, 2008 Offering Analysis was already out of date, Boutte began revising this report. The first revised report was dated June 6, 2008 and was submitted to ISAC approximately June 24, 2008. Except for changes to include updated financial statements provided by SBC and the inclusion of various media articles, the June 6, 2008 report was virtually identical to the January 3, 2008 report.
22. On August 6, 2008, the ISAC board approved an investment in two installments in SBC subject to the conditions of a term sheet for the investment which included a completion of a legal review and prudence

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opinion. The first investment of \$12,712,500 was funded and completed on September 30, 2008.

23. After the ISAC commissioners approved the investment, Boutte wrote to one of the commissioners regarding the SBC investment stating: "It's a great deal for ISAC and has a lot of upside."
24. Approximately September 11, 2008, Boutte delivered a third SBC Offering Analysis dated September 9, 2008. Similar to the second version, it was virtually identical to the previous versions with only updated financial information.
25. Portions of the financial analysis sections of all three versions of the Offering Analysis were prepared by a third person contracted by Boutte. This third person was paid \$50,000 from the fee paid by ISAC to Grigsby and Associates but was not disclosed as a subcontractor to ISAC as required by the contract and by State law.
26. After approval of the investment by the ISAC commissioners, several significant events took place that should have resulted in Boutte advising ISAC not to invest in SBC as follows:
  - a. In all three versions of Boutte's SBC offering analysis he notes that SBC is subject to examinations by the Federal Deposit and Insurance Commission (FDIC) and its State bank regulator and that the examination results are reported as CAMEL ratings from 1-5 (1 being the best; 5 the worst);
  - b. In his September 9, 2008 report, he states that ISAC should obtain SBC's most recent CAMEL Rating before finalizing the investment stating:

"If the institution has a Composite rating of 3 or less, some additional time should be spent with Management to clarify certain deficiencies prior to making an investment. If it is a 2 or better, and there are no material deviations in the anticipated component ratings (as we outlined), reliance on Management assertions would be more reasonable."

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- c. Similar language is also contained in the Grigsby and Associates January 3, 2008 and the June 6, 2008 reports drafted by Boutte;
  - d. Approximately August 26, 2008, Boutte and ISAC were informed that the CAMEL rating for Shore Bank included a rating for Asset Quality that was a 3 (a lower rating). Rather than advising and conducting additional inquiry for the reasons of the lower CAMEL rating, Boutte argued that no further due diligence was necessary and that ISAC should go forward with its September 30, 2008 date to close on its investment in SBC;
  - e. Approximately, August 28, 2008, ShoreBank executives informed Boutte that ShoreBank had missed its financial performance projections. Boutte failed to advise ISAC of the significance of this financial setback by ShoreBank but rather stated it was "No big deal" and that the bank could "weather any storm."
  - f. In all three versions of his Offering Analysis Boutte stated and provided statistics regarding bank failures in the United States writing that only 3 banks had failed in the last 3 year period of 2005-2007; and
  - g. By September 8, 2008, the date of Boutte's last Offering Analysis, 10 banks in the U.S. had failed and by September 30, 2008, the date of the ISAC investment in SBC, 13 banks had failed.
- 27. In August of 2010, ShoreBank was closed by the FDIC, wiping out the complete \$12,712,500 investment by ISAC.
  - 28. At the request of ISAC, Boutte submitted two prudence opinion letters both dated September 11, 2011. The first was delivered on September 11, 2008 and the second was delivered on September 26, 2008.
  - 29. Despite these warning signs, Boutte in his second prudence opinion letter dated September 11, 2008

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and delivered September 26, 2008 stated as follows:

"We have now concluded our 9 month due diligence process as your advisors on the proposed investment in Shorebank Corporation by the Illinois Student Assistance Commission on behalf of its' Pre-paid College Trust Fund.

Based on the information we gained during this extensive process and our understanding of the investment objectives of your fund it is the opinion of Grigsby & Associates that this investment as proposed is a prudent investment for ISAC's Pre-paid College Trust Fund. We recommend it without qualification."

30. After the closing of the SBC investment on September 30, 2008, Boutte submitted an invoice for his work on the Offering Analysis. The invoice was not itemized and did not provide any accounting of time nor services rendered in preparation by Boutte or any other person of Grigsby and Associates of the Offering Analysis. Rather, the amount received was a contingent fee and referenced the investment amount of \$12,780,000 and a formula of 2% of the invested amount resulting in a final fee of \$255,600. ISAC paid Grigsby and Associates this total fee amount sometime in December of 2008.
31. Not only was Boutte's fee contingent on the closing of ISAC's SBC investment, but unbeknownst to ISAC, Boutte was also soliciting other investors to invest in SBC and working with SBC to bring these other investors to SBC. According to Boutte, these investors' investment was contingent upon the ISAC investment.
32. On September 2, 2011, the Illinois Securities Department (the "Department") pursuant to its authority under Section 11 of the Illinois Securities Act issued a subpoena for testimony and records to Boutte with an appearance and response date of September 21, 2011 at 10:00 A.M. at the Department's Chicago Office (the "Subpoena").
33. On September 19, 2011 an attorney for Boutte submitted an entry of appearance but did not

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request a change of date nor time for the appearance under the Subpoena. Neither Boutte nor his counsel appeared before the Department on September 21, 2011 at 10:00 A.M. in the Chicago office as required by the Subpoena.

34. On September 21, 2011, Counsel for the Department at approximately 10:30 A.M. contacted the law firm of Boutte's attorney and requested to speak to Boutte's attorney. Counsel was advised that the attorney was not available. Counsel advised the law firm's personnel that a Subpoena had been issued for their client, Boutte, and neither Boutte nor his attorney had appeared at the Department's Chicago office.
35. Counsel for the Department requested a call back from Boutte's attorney that same day, September 21, 2011. No communication from the law firm nor Boutte's attorney was received that day.
36. As an investment adviser to the Illinois Student Assistance Commission, Boutte had a fiduciary duty to ISAC, the College Illinois! Fund and to the purchasers of Prepaid tuition contracts to provide investment advice and recommendations that were in the best interests of his clients, ISAC and the College Illinois! Fund.
37. The recommendations and investment advice to the Illinois Student Assistance Commission regarding the proposed investment in ShoreBank Corporation were unsuitable and in violation of Rules 130.850 and 130.853 of the Rules and Regulations Under the Illinois Securities Law of 1953, 14 Admin Code 130.100 et seq.
38. Boutte breached his fiduciary duty to ISAC and the College Illinois! Fund by:
  - a. Failing to prepare a complete and accurate Offering Analysis that fairly and objectively analyzed the rewards and risks of the SBC offering;
  - b. Entering into a contingent fee arrangement for due diligence and financial advisory services that was based upon the amount invested and would result in Boutte receiving payment only



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if the investment that he was analyzing and advising upon was made by ISAC and the College Illinois! Fund, his clients;

- c. Failing to disclose to ISAC that he was soliciting other investors to invest in SBC and working with SBC to bring additional investments by other investors contingent upon the ISAC investment; and
  - d. Recommending to ISAC to invest in an unsuitable, not in the best interests of ISAC, the College Illinois! Fund and the purchasers of prepaid investment contracts, investment in SBC despite evidence that the SBC investment was not a prudent investment for the College Illinois! Fund.
39. Boutte also made material misrepresentations and omissions as follows:
- a. Misrepresenting and omitting material information about the safety and soundness of investing in SBC;
  - b. Failing to inform ISAC that he was soliciting other investors in ShoreBank whose investment was contingent upon the ISAC investment;
  - c. Failing to inform ISAC of the inherent conflicts created by the contingent fee arrangement; and
  - d. Failing to disclose to ISAC that a subcontractor performed substantial amount of the work under Grigsby and Associates' contract and was paid or would be paid \$50,000.
40. That by virtue of the foregoing the Respondent has violated sections 12.A, D, F, G, H, I and J of the Act.
41. That Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsection D, F, G, H, I or J of Section 12 of the Act, the Secretary of State may by written order prohibit the person from offering or selling any securities or the

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business of providing investment advice in this State.


42. That Section 11.E(4) of the Act provides, inter alia, that if the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act.
43. That by virtue of the foregoing, the Respondent, Alvin Joseph Boutte, Jr., is subject to a fine of up to \$10,000.00 per violation, an order of censure and an order which permanently prohibits the Respondent from offering or selling securities and the business of providing investment advice in the State of Illinois.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above or a Special Appearance pursuant to Section 130.1107 of the Rules, or other responsive pleading within thirty days of the receipt of this notice. Your failure to do so within the prescribed time shall be deemed an admission of the allegations contained in the Notice of Hearing and waives your right to a hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default.

Delivery of notice to the designated representative of any Respondent constitutes service upon such Respondents.

Dated this 26<sup>th</sup> day of October, 2011.

  
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Jesse White  
Secretary of State  
State of Illinois

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